

4:15 CV 3062

FILED  
U. S. DISTRICT COURT  
DISTRICT OF NEBRASKA  
2015 JUN -4 PM 12:31

FORM A To be used by a prisoner filing a complaint under the  
Civil Rights Act, 42 U.S.C. § 1983

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

Brandon Lee Capek

(Enter above the full name of  
the plaintiff or plaintiffs  
in this action.)

v.

COMPLAINT

Samuel Grove

State of Nebraska

(Enter above the full name of  
the defendant or defendants  
in this action, if known.)

(Note: If there is more than one plaintiff, a separate sheet  
should be attached giving the information in Parts I, II, and III  
for each plaintiff, by name. Remember, all plaintiffs must sign  
the complaint.)

I. A. Place of Present Confinement Nebraska State Penitentiary

B. Parties to this civil action:

Please give your commitment name and any other name(s)  
you have used while incarcerated.

(1) Plaintiff Brandan Lee Capek Registr. No. Don't Know  
Address Po Box 2500 Lincoln Ne 68542

Additional plaintiff's Registr. No. and address:

(2) Defendant Samuel Grove  
is employed as Corrections officer at Nebraska State Penitentiary  
Additional defendant's employment: Don't Know

## II. Previous Civil Actions

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ☐ No ☒

- (1) Title: \_\_\_\_\_ (Plaintiff) (v.) (Defendant)
- (2) Date filed \_\_\_\_\_
- (3) Court where filed \_\_\_\_\_  
(specify if the court was state or federal and the level of the court)
- (4) Court number and citation \_\_\_\_\_
- (5) Name of judge to whom the case was assigned \_\_\_\_\_
- (6) Basic claim made \_\_\_\_\_
- (7) Date of disposition \_\_\_\_\_
- (8) Disposition \_\_\_\_\_  
(pending) (on appeal) (resolved)
- (9) If decided by the court, state whether for plaintiff or defendant \_\_\_\_\_
- (10) Approximate date of filing \_\_\_\_\_

(11) Approximate date of judgment \_\_\_\_\_

For additional cases, provide the above information in the same format on a separate page.

B. Have you begun other cases in state or federal courts relating to the conditions of your treatment while in confinement? Yes \_\_\_ No X

### III. Grievance Procedure

A. Does your institution have an administrative or grievance procedure? Yes X No \_\_\_

B. Did you present the facts relating to your complaint through the administrative or grievance procedure? Yes X No \_\_\_

C. What was the result? Matter was being investigated  
action will not be discussed with me

D. If you did not file a grievance, state the reasons \_\_\_\_\_

E. Please attach any responses as exhibits to this complaint.

F. If there is not prisoner grievance procedure at your institution, did you complain to prison authorities? Yes \_\_\_ No X

G. If your answer to F is yes,

A. What steps did you take and what was the result? \_\_\_\_\_

### IV. Jurisdiction

A. Is this complaint brought for a violation of your federal constitutional rights by a person employed by the state, county, or municipal government or acting with such government officials? Yes X No \_\_\_

If "yes," please state the agency the official(s) is/are employed by or why you believe the defendant(s) was/were acting in conjunction with government

officials: Being state employed Corrections Officer

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- B. Is this complaint brought for a violation of state or local law? Yes X No

If so, please specify (without alleging any supporting facts) the state law(s) you believe was/were violated Assault

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Is/are the defendant(s) residents of the same state as you? Yes X No     

If not, specify what state                                     

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V. Statement of Claim:

(State here as briefly as possible the **FACTS** of your case. You must state exactly what each defendant personally did, or failed to do, that resulted in harm to you, and describe the harm. Include the names of other persons involved (for example, other inmates), dates, and places of all events. If you allege related claims, number and set forth each claim in a separate paragraph. Attach an extra sheet, if necessary. Unrelated claims should be raised in a separate civil action. Do not give legal arguments or cite cases or statutes except in Part B below.

A. Crpl Grove said that I threw coffee and hit him  
with it when actually I dropped my cup off the  
food hatch spilling the liquids along with dropping my personal  
cup also. Then he (Crpl Grove) kicked my food hatch smashing  
my left hand in it splitting the top of my hand open. Inmate

Bobby Cole 60431 witnessed the whole ordeal as Cpl Grove kicked the hatch repeatedly. It was an accident and unprovoked. I've exhausted my grievance policies and a copy is attached. A picture was taken of my left hand and then medical gave me an ace wrap and ice bag. Since then I have had numbness in my hand and is on medicine for that.

B. State briefly your legal theory or cite appropriate authority: I would think that a money damage is appropriate.  
I believe \$75,000 against Crpl Samuel Grove and State of Nebraska  
would be ~~appropiate~~ appropriate. And charges be filed  
against Samuel Grove.

## VI. Relief

A. Do you request money damages? Yes X No     

If so,

1. Did you lose any money from this incident?  
Yes \_\_\_\_ No X If so, how much? \_\_\_\_\_
2. Did you receive a physical injury? Yes X No \_\_\_\_
3. What other harm did you experience from this incident? Nerve damage

4. State the amount of damages claimed \$75,000 physical damage  
\$25,000 emotional
- B. Do you request a jury trial? Yes X No
- C. State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.
- I would like the court to grant me the amount of money for physical and emotional damages against said defendants. Also would like to see that Cpl Grove is terminated from Corrections completely with Assault Charges pressed.

VII. Request for Appointment of Counsel

- A. Do you want an attorney to represent you in presenting your claim to the court? Yes X No
- B. Did someone help you in preparing this complaint? Yes     No X If so, state the person's name (optional)

- C. Have you made any efforts to contact a private lawyer to determine if he or she would represent you in this action? Yes X No

If so, state the name(s) and address(es) of each lawyer contacted Brad Kalkwarf 321 S Main St. P.O. Box 905 Wilber NE 68465

If not, state your reasons    

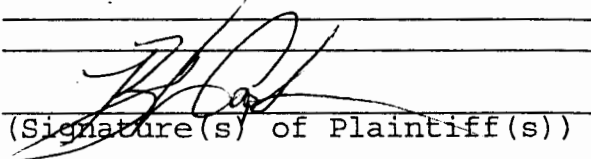
(Note: This court has no funds with which to pay an attorney for handling this type of case. Because of this, appointments are made only in cases where an attorney is greatly needed and the

attorney is willing to take the case without expecting to receive any fee.)

I declare under penalty of perjury that the forgoing is true and correct.

Signed this 29<sup>th</sup> day of May, 2015.

Brandon Capek

  
(Signature(s) of Plaintiff(s))

A-13

NSP

CAPEK, BRANDON #72896  
2014-11407

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES  
**GRIEVANCE FORM**  
**Step Two**  
**Central Office Appeal**  
**RESPONSE AND REASONS FOR DECISION REACHED**

Inmate Name: CAPEK, BRANDON  
Inmate Number: 72896  
Date Received: 12-02-2014  
Grievance Number: 2014-11407  
Subject: Staff  
Response:

You contend that Corporal Grove kicked the food hatch causing you physical injury. Staff reports that this matter is being investigated by the appropriate staff. Please be advised any disciplinary action taken against staff will be confidential and not discussed with you.

12-9-14  
Date

J. H. Hopkins  
Director



**NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES**  
**GRIEVANCE FORM**  
**Step One**  
**CHIEF EXECUTIVE OFFICER**

INSTRUCTIONS:  
 TYPE OR USE BALL POINT  
 PEN. IF MORE SPACE IS  
 NEEDED, USE ATTACHMENT  
 SHEET IN TRIPLICATE.

From: Capek Brandon L 72896 CU A13  
LAST NAME, FIRST, MIDDLE INITIAL NO. FACILITY/HOUSING UNIT

**Part A - INMATE REQUEST/CONCERN:**

Crpl Grove Kicked the food hatch causing physical harm to my left and right hands. He said in a write up that I assaulted him by throwing coffee on him and he kicked my hatch due to my hand being out of the cell. I beat the write up on throwing my coffee on him but found guilty of having my hands out of my cell. I want assault charges persed on him for the use of excessive force causing bodily harm.

11-17-14

DATE

*[Signature]*  
 SIGNATURE OF REQUESTOR

**Part B - RESPONSE AND REASONS FOR DECISION REACHED**

I support the response on Informal Grievance Resolution Form #2014-11407. The information regarding staff actions has been forwarded to the Department's Investigative Office for further review.

11/21/14

DATE

*[Signature]*  
 CHIEF EXECUTIVE OFFICER

ORIGINAL: TO BE RETURNED TO INMATE AFTER COMPLETION.

**NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES  
INFORMAL GRIEVANCE RESOLUTION FORM  
UNIT STAFF**

FROM: Capek Brandon L 72896 NSP/Control Unit  
Last Name, First, Middle Initial Number Facility/Housing Unit

**PART A: Inmate Request/Concern.**

Crpl Grove desided since I didnt put my hand in my foot hole fast enough that he would kick the hatch causing physical harm towards me. I never threating him or nothing to provoke a cause for physical harm. I want assault charges pressed

11-12-14  
Date

[Signature]  
Signature

**PART B: Response and Reason(s) for Decision Reached.**

THIS INCIDENT HAS BEEN REVIEWED AND APPROPRIATE ACTIONS WILL BE TAKEN. ANY ACTIONS THAT MAY BE IMPLEMENTED AGAINST EMPLOYEES AS A RESULT OF THIS INCIDENT WILL NOT BE DISCUSSED WITH YOU. IF YOU DISAGREE WITH THE RESULTS OF THE DISCIPLINARY HEARING, YOU MAY USE THE ESTABLISHED APPEAL PROCESS.

11-18-14  
Date

[Signature]  
Signature

**NOTE:** A copy of this completed *Informal Grievance Resolution Form* must accompany any *Step 1 Institutional Grievance Form*.

**RECEIVED**

NOV 21 2014



Dave Heineman, Governor ◊ STATE OF NEBRASKA  
Michael L. Kenney, Director ◊ DEPARTMENT OF CORRECTIONAL SERVICES

DATE: November 20, 2014

TO: Diane Sabatka-Rine, Warden

THRU: Matt Tracy, Unit Administrator

FROM: Christopher Whitfield, Unit Manager

SUBJECT: Suggested Response – Brandan Capek #72896 Step One Grievance

**BACKGROUND:**

On 11/12/2014, inmate Brandan Capek #72896 (CU-A-13), filed an Informal Grievance. This grievance was in concern to fact that Corporal Grove kicked the hatch to his cell door shut thus injuring his hand. He stated that it was unprovoked and that he wanted to press assault charges against Corporal Grove.

The initial misconduct report written by Corporal Grove on 11/11/14 stated that inmate Capek had thrown coffee on him hitting him in the head and left shoulder. Inmate Capek had his hands out of the hatch and would not comply with orders to put them back into the cell. Corporal Grove then stated that he kicked the tray hatch just hard enough to convince Capek to put his hands back in. Capek then threatened to kill Corporal Grove before eventually putting his hands back in the cell at the request of Sergeant Hoelsing.

Inmate Capek was charged with 2H Use of threatening Language or Gestures/Fighting, 3A Flare of Temper/Minor physical Contact, 2E Disobeying a Direct Order, 3D Swearing, Cursing or use of Abusive Language or Gestures, and 3K Disruption of Authorized Duties. All charges were dropped with the exception of 3K Disruption of Duties which he received time served for 9 meals of alternative food services.

**ATTACHMENTS:**

Disciplinary Misconduct Reporting Form MR #58YY  
Institutional Disciplinary Committee Action Sheet MR #58YY

**SOURCE:**

UM Christopher Whitfield

**SUGGESTED RESPONSE:**

*I support the response on Informal Grievance Resolution*  
Your concerns were addressed in the response to the Informal Grievance dated 11-12-14. The incident regarding staff actions has been forwarded to the appropriate departmental personnel for review. I support the findings in the Informal Grievance as any actions implemented against employees as a result of an incident will not be discussed with you. *2014.114*

*information*  
*Department's Investigative Office for further review.*  
Christopher Whitfield, Unit Manager

NEBRASKA STATE PENITENTIARY

P.O. Box 2500 : Lincoln, Nebraska 68542-2500 ◊ Phone (402) 471-3161

An Equal Opportunity Employer

\* Scanned/e-mailed

*2014.114*  
*2 Brad Hansen on 11/20/14*

**Madsen, Robert**

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**From:** Madsen, Robert  
**Sent:** Thursday, November 20, 2014 3:28 PM  
**To:** Hansen, Brad  
**Subject:** Inmate Complaint  
**Attachments:** 2570\_001.pdf

Brad,  
Please see attached inmate grievance and reports from the incident that leads to the inmate's complaint. Inmate Capek indicates in his grievance that he wants to file assault charges against Corporal Samuel Grove. On November 11, 2014, inmate Capek threw coffee on Cpl. Grove and Cpl. Grove responded by kicking the cell hatch (Control Unit) while inmate Capek's arm was still out of the hatch. Inmate Capek was examined by medical staff and the report indicates that he had a small cut to the back of his left hand. Cpl. Grove currently has a Statement of Charges pending for his actions. If you have any questions, please let me know. ↗

Thank you.

Robert S. Madsen  
Deputy Warden  
Nebraska State Penitentiary  
402-479-3202

*Have to get that  
through court they  
will not give that  
to me.*

**From:** [dcscopiers@nebraska.gov](mailto:dcscopiers@nebraska.gov) [<mailto:dcscopiers@nebraska.gov>]  
**Sent:** Thursday, November 20, 2014 3:09 PM  
**To:** Madsen, Robert  
**Subject:** Attached Image

**Nebraska Department of Correctional Services**  
**DISCIPLINARY MISCONDUCT REPORTING FORM**

M.R.#: 58YY

Time: 08:08 &amp; Date Filed: 11/11/2014

Time: 08:54 &amp; Date Logged: 11/11/2014

Name: CAPEK, BRANDAN L

Inmate Number: 72896

Date: 11/11/2014 and Time: 07:54 report was written

Reporting Employee: Cpl. Grove

RULE INFRACTION: (Ct 1) 2H-USE OF THREATENING LANGUAGE OR GESTURES/FIGHTING, (Ct 2) 3A-FLARE OF TEMPER/MINOR PHYSICAL CONTACT, (Ct 3) 2E-DISOBEYING AN ORDER, (Ct 4) 3D-SWEARING, CURSING, OR USE OF ABUSIVE LANGUAGE OR GESTURES, (Ct 5) 3K-DISRUPTION OF AUTHORIZED DUTIES

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EXPLAIN VIOLATION FULLY: (who, what, when, where, how, why, and your action)

I, Cpl. Grove, was assigned to the control unit at Nebraska State Penitentiary on Nov. 11, 2014. At 0700 hrs. I was on A-gallery assisting with the feeding of the breakfast meal. At this time I was at the hatch of cell A-13, in which the sole occupant is inmate Capek, Brandan #72896. I asked Capek what he wanted to drink he stated that he wanted me to put coffee in his cup which he placed on the hatch of his cell. He also stated that he wanted two milks and a juice. I explained that I could not handle his cup to put coffee in it because it was a sanitation issue. I explained that I could put milk in his cup or on his cereal and give him a milk, a juice and a coffee in the food service cups. He insisted that I put coffee in his cup. I responded that I had already explained why I could not do this and gave him one cup each of milk, juice and coffee. I then asked if he wanted milk in his cup. He responded very angrily that he wanted coffee in his cup. I continued on to feed the next inmate. Capek then proceeded to assault me by throwing his cup of hot coffee at me. In the process of doing this Capek knocked his empty personal cup off the hatch of his cell onto the gallery floor. The majority of the coffee hit me in my head and left shoulder. I then went over to his cell to close the hatch so he could not continue to throw items at me. He stuck his left hand out of the hatch and would not allow me to close it. I gave him several directives to pull his hand inside the hatch. He refused. I then kicked the hatch just hard enough to try to convince him to pull his hand inside. He pulled his left hand in and put his right hand out in its place. He then began making threats to me that he was going to kill me. I continued to direct him to pull his hands inside so the hatch could be secured. Sgt. Hoelsing came over and attempted to gain compliance from Capek. Capek eventually complied upon Sgt. Hoelsing giving him his personal cup back. Nurse John Klone came to the control unit to conduct medical rounds at 0735 hrs. I explained to him what had taken place and suggested he look at Capek if he was willing to be seen. He did so.

Evidence Collected: NO

Where Held:

by:

≡  
why  
not

Cpl. Grove

(Signature of Reporting Employee)

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**HEARING BEFORE INVESTIGATING OFFICER**

Date: 11/13/2014 and Time : 10:06 of Hearing before Investigating Officer.

Number of hours between infraction or discovery and filing: 1.13

Inmate Present: YES

Comment: I didn't throw the cup at him. My cup was on the hatch and I went to grab mine and when I did I didn't grab the handle



**Nebraska Department of Correctional Services**  
**DISCIPLINARY MISCONDUCT REPORTING FORM**

M.R.#: 58YY

Time: 08:08 &amp; Date Filed: 11/11/2014

Time: 08:54 &amp; Date Logged: 11/11/2014

the handle right. I didn't intentionally throw anything at him at all. The cup landed right outside of my cell and he was standing by the next cell, how did it hit him? He only gave me one directive to pull my hand in then he kicked it and I pulled my hand in. My right hand took the most damage, both of my hands got hit but I had both of them out not just one. That's a lie.

For the purposes of my Disciplinary Committee hearing on this misconduct report:

IDC Representation Requested: YES

Who: Riggle 78532

IDC ~~Witnesses~~ Requested: YES

Who: Cole 60431

IDC Employee Requested: WAIVED

IDC 24Hr Notice of Charges:

24Hr Notice of Hearing:

Appearance Before Committee:

Dismissal Recommended: NO

Investigation Continued: NO

Date: and Time:

Comments and Finding of facts: None

Recommended date of Disciplinary Committee Hearing:

Date: 11/17/2014 and Time : will call

Copy of completed report delivered to inmate:

Date: 11/13/2014 and Time : 10:09

Ask inmate (if applicable): Do you knowingly, intelligently, and voluntarily waive the above indicated rights? Do you affirm that no threats, coercion, or promises have been made to you to obtain your signature? Do you understand that the rights you've waived will not influence the disposition of the Committee?

Inmate's Waiver Response : YES

If your case is heard at Unit Disciplinary Committee (UDC), you have no right to a representative, no right to the reporting employee present at the hearing, no right to request witnesses, no right to receive twenty-four hours notice of the charges, and no right to appeal the decision.



(Signature of Inmate)


  
Sgt. Goodman

(Signature of Investigating Officer)

**Nebraska Department of Correctional Services**  
**INSTITUTIONAL DISCIPLINARY COMMITTEE ACTION SHEET**

M.R.#: 58YY

Log Time/Date: 11/11/2014 08:54 AM

Institution: NSP

Name: CAPEK, BRANDAN L      Number : 72896      Hrg. Date: 11/17/2014      & Time: 13:41

**CHARGES :** (Ct 1) 2H-USE OF THREATENING LANGUAGE OR GESTURES/FIGHTING, (Ct 2) 3A-FLARE OF TEMPER/MINOR PHYSICAL CONTACT, (Ct 3) 2E-DISOBEYING AN ORDER, (Ct 4) 3D-SWEARING, CURSING, OR USE OF ABUSIVE LANGUAGE OR GESTURES, (Ct 5) 3K-DISRUPTION OF AUTHORIZED DUTIES

Date/Amended Charge(s):      Waived 24-hour Notice of Amended Charge(s):      Initials of Inmate:

Continued Hearing:      Reason:      Continued To:

Interpreter Present:      *(This is your 24-hour notice)*

For the purposes of my Disciplinary Committee hearing on this misconduct report:

Representative Requested?: YES      Who: Riggle 78532

Representative Present?: YES      If not, why?:

Witnesses Requested?: YES      Who: Cole 60431

Witness Present?: NO      If not, why?: Submitted statement

Reporting Employee: Cpl. Grove      Requested: WAIVED      Present:

Inmate given 24-hour notice of disciplinary charge(s) : YES      Inmate given 24-hour notice of hearing: YES

Appearance Before the Committee:

Ask inmate (if applicable): Do you knowingly, intelligently, and voluntarily waive the above indicated rights? Do you affirm that no threats, coercion, or promises have been made to you to obtain your signature? Do you understand that the rights you've waived will not influence the disposition of the Committee?

Inmate's Waiver Response :

\_\_\_\_\_  
 (Signature of Inmate Waiver)

**PRESENTATION OF EVIDENCE:**

Summary of Inmate's testimony: Capek #72896- I want it to be known that the statement I made before is the same now I did not throw any coffee.

Witness(es) testimony : None

Documentary evidence submitted by the Inmate: None

**EVIDENCE RELIED ON TO SUPPORT FINDINGS:**

Misconduct Report:# 58YY

Date of Misconduct Report: 11/11/2014

Testimony of following persons: Capek #72896

\* Written statements, physical evidence, documentary evidence, or other: Inclass, IDC Witness statement by Cole 60431, Memo by Lt. Runge, IR by Sgt Hoelsing, OM 201.002.102 Attachment 9 Page 20 and 21

## Institution: NSP

Date \_\_\_\_\_



Inmate Name Brandon Capek  
Inmate Number 72896  
Box 2500  
Lincoln, NE 68542-2500

NOTICE: This correspondence was mailed from  
an institution operated by the  
Nebraska Dept. of Correctional Services.  
No contents are unsecured.

**RECEIVED**

JUN 04 2015

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